

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

---

TYLER WOOD,

Plaintiff,

vs.

AFFIDAVIT

MEDTRONIC, INC.,

14-CV-6928 CJS

Defendant.

---

Thomas J. Rzepka being duly sworn, deposes and says:

1. I am an attorney at law and I am admitted to practice law in this Court and I am the attorney for the Plaintiff herein and as such I am fully familiar with the facts and circumstances involving this case and its procedural posture.

2. I make this affidavit to the Court pursuant to Local Rule 41(b) requesting that the Court not dismiss Plaintiff's action.

3. As the Court is aware, this case was originally sued in New York State Supreme Court, Monroe County, and was removed to Federal Court by the Defendant. Plaintiff also has another New York State Supreme Court action venued in Monroe County with index number 14-4818 with caption "Tyler Wood vs. Fisher-Price, Inc., John M. Mulcahy, Jr., and Michele A. Mulcahy".

4. Both lawsuits arise out of a certain accident which occurred on October 2, 2001 when the Plaintiff was 8 years old. Plaintiff's date of birth is April 26, 1993. Plaintiff was riding a power wheel known as a Kawasaki Ninja 98 which was manufactured by Fisher-Price, Inc. and owned by the Mulcahy defendants who let Plaintiff ride the power wheel. Plaintiff pulled on the handle bars to the power wheel causing the handle bars to detach and Plaintiff fell backwards off the power wheel and his head hit the ground causing severe injuries to the Plaintiff's neck.

5. Plaintiff was placed in a halo for fourteen weeks and was diagnosed as having

instability of the atlantoaxial joint with a question of a fracture to C1-C2. The Plaintiff also consulted with doctors at the University of Iowa Health Care and eventually had surgery there in January of 2003. The rod which was implanted at that time fractured causing another surgery at the University of Iowa Health Center on March 14, 2006.

6. During the surgery to repair the fractured rod, the bone graft manufactured by the Defendant was used. Plaintiff has experienced symptoms which are believed to be related to the use of the bone graft.

7. The suit in Supreme Court is progressing through discovery and much of the discovery in that case will be duplicative in this case. Plaintiff fully intends to pursue this claim and will do it on a parallel track with the Supreme Court case.

8. It is respectfully submitted that the Court allow this matter to proceed and not dismiss Plaintiff's action.



\_\_\_\_\_  
Thomas J. Rzepka  
Attorney for Plaintiff  
28 East Main Street, Suite 900  
Rochester, New York 14614  
(585) 458-2800, Ext 320

Sworn to before me this  
25<sup>th</sup> day of November, 2014



\_\_\_\_\_  
Jean E. Nothnagle  
Notary Public

JEAN E. NOTHNAGLE  
Notary Public, State of New York  
Orleans County  
My Commission Expires 5/30/15